IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 16002 of 2003(E)

PETITIONER:

S.SADASIVAN PILLAI, U.D.CLERK (RETD.),
NM NSS COLLEGE, KOTTIYAM, KOLLAM

BY ADV. SRI.BRIJESH MOHAN
SMT.RESMI G. NAIR

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS
PRINCIPAL SECRETARY TO GOVERNMENT,
FINANCE DEPARTMENT, GOVT. SECRETARIAT, TRIVANDRUM.

2. THE DEPUTY DIRECTOR OF COLLEGIATE
EDUCATION, KOLLAM.

3. THE PRINCIPAL, NM NSS COLLEGE,
KOTTIYAM, KOLLAM.

R1, R2 BY GOVT. PLEADER SRI.N.MANOJ KUMAR
R3 BY SRI.P.GOPAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A. NO.602 OF 2003 IN W.P(C) NO.16002 OF 2003 E

//DISMISSED//

15.06.2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE LETTER DT.5.10.01 SENT BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT FORWARDING THE OPTION OF THE PETITIONER.

EXT.P2: TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DT.NIL.

EXT.P3: TRUE COPY OF THE ORDER DATED 24.2.2002 ISSUED BY THE 1ST RESPONDENT GRANTING 3RD HIGHE RGRADE TO THE PETITIONER.

EXT.P4: TRUE COPY OF THE LETTER DATED 31.3.2003 ISSUED BY THE 1ST RESPONDENT.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.16002 OF 2003

Dated this the 15th day of June, 2007

JUDGMENT

The petitioner, who joined the service of a corporate management on 23.9.1971 as an Attender in one of its aided colleges, attained the age of 50 years by the end of February, 1994. In the mean while, he had been placed as L.D.Clerk and after he completed the age of 50 years, he was placed as U.D. Clerk. He retired from service on 28.2.1999. Thereafter, acting on his representation, by Ext.P3, the Government accorded sanction for 25 years higher grade to be given to him with effect from 23.9.1996, i.e., the date on which he completed 25 years of service after his entry on 23.9.1971. Thereafter, the Government has issued Ext.P4, by which, the benefit given under Ext.P3 has been recalled, without giving the petitioner any opportunity of pre-decisional hearing and by making reference only to a Government letter dated 8.1.1993, in terms of which, the Government, through Ext.P4, states that the petitioner was not entitled to the benefit extended as per Ext.P3.

2. If the entitlement of the petitioner to a higher grade is dependent on executive orders of the Government, no Government letter, including the one dated 8.1.1993, could have deprived him of that, because, a Government letter cannot, in any manner, modify an executive decision issued by the Government in the form of a Government Order. Be that as it may, it is pointed out by the Government in its counter affidavit that the petitioner having attained the age of 50 years only by the end of February, 1994, his placement as LDC prior to that without his securing the statutory qualifications disentitles him to be considered as a qualified person stagnating in a category for the purpose of extending to him the benefit of a higher grade.

3. Having regard to the conflict of contentions, it was not a case where the Government could have finally concluded the issue without affording the petitioner an opportunity of being heard. In view of the career details of the petitioner, I also do not deem it appropriate to decide the case ultimately on merits, without the petitioner being heard at the highest level in the executive.

4. For the aforesaid reasons, the impugned Ext.P4 is quashed and a decision de novo shall be taken by the Government within a period of three months from now. Until then, the status obtained as per Ext.P3 will continue. However, if decision as directed above is not taken within the period specified, it shall be treated that Ext.P4 does not further govern the petitioner and all consequences shall follow.

The writ petition is disposed of with the above directions.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.16002 OF 2003

JUDGMENT

15TH JUNE, 2007.

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